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Akebono Corporation (North America).

UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK

In re:	)	Chapter 11
	)	
Delphi Corporation et al.,	)	Case No. 05-44481 (RDD)
	)	(Jointly Administered)
	)	
Debtors.	)	

**RESPONSE OF AKEBONO CORPORATION TO  
DEBTORS' TWENTY-FIRST OMNIBUS CLAIMS OBJECTION**

Akebono Corporation (North America) (also known as Akebono Corporation)  
("Akebono") files this response to the Debtors' Twenty-First Omnibus Claims Objection  
showing the Court as follows:

1. Delphi Corporation, et al. (the "Debtors") filed their voluntary bankruptcy petitions on and as of October 8, 2005 (the "Petition Date"). The Debtors continued to operate their businesses and manage their affairs as debtors-in-possession following the Petition Date pursuant to Chapter 11 of the Bankruptcy Code.

2. This Court set July 31, 2006 (the "Bar Date") as the date for general unsecured creditors to file proofs of claim against the Debtors.

3. On or about March 28, 2006, Akebono timely filed its Proof of Claim [Claim No. 2433] (the “Claim”) in the amount of \$231,027.90 against Delphi Automotive Systems, LLC. A copy of the Claim as filed is attached hereto and incorporated herein as Exhibit A.

4. On September 21, 2007, the Debtors filed the Debtors’ Twenty-First Omnibus Objection (Docket No. 9535) (the “Twenty-First Claims Objection”) in which the Debtors objected to the Claim on the grounds that the Claim does not appear on the Debtors’ books and records.

### **AKEBONO’S RESPONSE**

5. Akebono prepared and filed the Claim in accordance with the applicable provisions of 11 U.S.C. §502(a), Rules 3001, 3002 and 3003 of the Federal Rules of Bankruptcy Procedure (in effect as of the Petition Date) prior to the Bar Date and in accordance with Official Form 10. In accordance with item 7 of Official Form 10, Akebono attached supporting documents to the Claim but because the total of such documents exceeded 300 pages, Akebono’s attachment consisted of a business record which showed the dates, amounts and individual invoice numbers of all unpaid invoices and the account number of each Debtor.

6. A proof of claim which has been prepared and filed in accordance with the Rules is *prima facie* evidence of the validity of the amount of the claim. In re Reilly, 245 B.R. 768, 773 (2d. Cir. B.A.P. 2000); Fed.R.Bankr. P. 3001(f).

7. Once the claimant has established its *prima facie* case, “the burden of going forward then shifts to the debtor to provide evidence sufficient to negate the *prima facie* validity of the filed claim.” In re Make Meat Corp., 1999 U.S. Dist. LEXIS 3974 (S.D.N.Y.)(internal citations omitted). To overcome this *prima facie* evidence, the debtor must introduce evidence equal in force to the underlying proof of claim. Carey v. Ernst, 333 B.R. 666, 672 (Bankr.

S.D.N.Y. 2005); 5 King, Collier on Bankruptcy ¶502.2 (“Should objection be taken, the objector must produce evidence and show facts tending to defeat the claim by probative force equal to that of the allegation in the Proof of Claim”).

8. Therefore, once a claim is filed, the trustee or the debtor-in-possession carries the burden of going forward to meet, overcome, or at least equalize, the creditor’s evidence. See In re Kahn, 114 B.R. 40, 44 (Bankr. S.D.N.Y) (citing In re Allegheny Int’l, Inc., 954 F.2d 167, 173-174 (3rd Cir. 1992), for the proposition that the party objecting to a proof of claim has the burden of coming forward with sufficient evidence rebutting the validity of a properly filed proof of claim). Indeed, the objector must offer actual evidence sufficient to rebut the claim’s presumed validity. In re White, 168 B.R. 825, 829 (Bankr. D. Conn. 1994).

9. The Debtors’ 21st Claims Objection sets forth no evidence to disprove the validity of the Claim. The Debtors’ 21st Claims Objection sets forth no legal basis to disprove the validity of the Claim. The Debtors merely assert that the Claim does not comport with their books and records, but they do nothing to address the evidence of the Claim as attached to the Claim itself.

10. Therefore, the Debtors’ request for disallowance of the Claim fails to overcome the *prima facie* validity of the claim as required by Bankruptcy Rule 3001.

11. The addresses to which the Debtors must return any reply to the Response, if different from the addresses presented in the Claim are:

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400 W. Market Street  
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and

Brandon J. Kessinger  
General Counsel  
Akebono Brake Corporation  
(North American Headquarters)  
310 Ring Road  
Elizabethtown, Kentucky 42701.

**WHEREFORE,** Akebono respectfully requests that this Court deny the Twenty-First Claims Objection as it pertains to the Claim, allow the Claim as filed in the amount of \$231,027.90, and provide such further relief as is just and proper.

October 15, 2007

Respectfully submitted,

/s/ W. Robinson Beard

W. Robinson Beard (Ky. Bar No. 03960)

*Admitted Pro Hac Vice*

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CERTIFICATE OF SERVICE

I, W. Robinson Beard, certify that the foregoing Response was served via electronic mail and/or United States mail, postage prepaid, to the parties listed on the following service list this the 15th day of October, 2007.

Delphi Corporation  
5725 Delphi Drive  
Troy, MI 48098  
Attention: General Counsel

Skadden, Arps, Slate, Meagher and  
Flom LLP  
333 W. Wacker Dr. Ste. 2100  
Chicago, ILL 60606  
Attention: John Wm. Butler, Jr.  
John K. Lyons  
Joseph N. Wharton

Latham & Watkins LLP  
885 Third Avenue  
New York, New York 10022  
Attention: Robert Rosenberg  
Mark A. Broude

Fried, Frank, Harris, Shriver &  
Jaconbson LLP  
One New York Plaza  
New York, New York 10004  
Attention: Bonnie Steingart

Office of the United States Trustee  
For the Southern District of  
New York  
33 Whitehall Street Ste. 2100  
New York, New York 10004  
Attention: Alicia M. Leonhard

Honorable Robert D. Drain  
United States Bankruptcy Judge  
United States Bankruptcy Court for  
the Southern District of New York  
One Bowling Green, Room 632  
New York, New York 10004

/s/ W. Robinson Beard  
W. Robinson Beard